

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 309 of 1997

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For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KHIMJIBHAI PATEL AND OTHERS

Versus

GANESH TRADERS

Appearance:

MR JB PARDIWALA for Petitioners
MR AB MUNSHI for Respondent No. 1
MR SA PANDYA, APP for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/02/99

COMMON ORAL JUDGEMENT

The petitioners-original accused have preferred above three Criminal Revision Applications for quashing the proceedings in Criminal Cases No.3285/96, 1118/97 and 2667/96 which are pending in the court of Joint Judicial Magistrate, First Class, Pardi, District Valsad. In pursuance of the process issued by the court below, present petitioners of the above numbered applications

have appeared before the court below and have submitted the discharge applications. After hearing the same, the learned Jt. Judicial Magistrate First Class, Pardi had rejected the same, and therefore, they have preferred present three Criminal Revision Applications for quashing the proceedings in question.

2. The complainant and the accused in each criminal case are same and the nature of offence are also similar, and therefore, with the consent of the learned counsel for the respective parties, the present three Criminal Revision Applications heard together and decide by this common judgment.

3. The brief facts of the above three Criminal Revision Applications are as under:-

The complainant is a Manager in a Company running in the name and style of Shri Ganesh Traders and are dealing in business of Craft Paper. Accused Nos. 1 and 2 are partners of a partnership firm running in the name and style of Maharashtra Packaging and are also dealing in the business of manufacturing Card Boards. It is the case of the complainant that the complainant had supplied a consignment of craft paper to the company to the accused Nos.1 and 2 worth Rs.3,30,000/-. This payment of Rs.3,30,000/- was pending since long and the accused persons on one pretext or the other were avoiding the payment. It is the case of the complainant that thereafter one cheque for an amount of Rs.30,000/- and five cheques for an amount of Rs.60,000/- each were given to the complainant by the accused persons. Cheque for an amount of Rs.30,000/- was cleared, however, one cheque for an amount of Rs.60,000/- bearing No.6309752 dtd.30.10.96 was presented by the complainant for encashment in Valsad Jilla Sahkari Bank at Udwada. However, Dena Bank Valsad Branch sent an intimation to the complainant that the Cheque No.6309752 for an amount of Rs.60,000/- could not be cleared as the accused persons have intimated the Bank to make stop payment. So ultimately complainant has filed a complaint in the court of Jt. J.M.F.C. at Pardi, which was registered as Criminal Case No.3285/96. Against that, present petitioners-original accused have preferred present Criminal Revision Application No.309/97.

The complainant has presented a Cheque bearing No.6309753 dated 30.12.1996 of Rs.60,000/- presented before the Valsad Jilla Sahakari Bank at Udwada, but, same could not be cleared as the present petitioners-original accused have intimated the Bank to

make stop payment. So after issuing the notice, complainant has filed a complaint in the court of Jt. J.M.F.C. at Pardi which was registered as Criminal Case No.1118 of 1997 in which court below has issued the process and against which present petitioners-original accused have preferred Criminal Revision Application No.310/97.

The complainant has presented a Cheque bearing No.6309751 dtd.30.08.96 of Rs.60,000/- presented before the Valsad Jilla Sahakari Bank at Udwada, but same could not be cleared as the present petitioners-original accused have intimated the bank to make stop payment. So after issuing the notice, complainant has filed a complaint in the court of Jt. J.M.F.C. at Pardi which was registered as Criminal Case No.2667/96 in which court below has issued the process and against which present petitioners-original accused have preferred Criminal Revision Application No.311/97.

4. I have heard Mr.J.B.Pardiwala, learned advocate for the petitioners, Mr.A.B.Munshi, learned advocate for the respondent No.1 and Mr.S.A.Pandya, learned APP for the respondent No.2-State.

5. At the time of argument, learned advocate for the petitioners-original accused has restricted his argument only on the point that, the complaint is not filed by a "payee" or a holder in due course" but the complaint is filed by a Manager, and in the complaint there is nothing to indicate that he has any authority to file a complaint on behalf of the payee or a holder in due course. The complainant has no locus to file the complaint against the petitioners. The complaint is filed by one Jamnadas Nagardas Modi, who claims to be the Manager in Shri Ganesh Traders. The complainant is not holder in due course and therefore he has no right to file the complaint on behalf of firm and even he has not produced any such letter or authority to that effect. It was necessary to mention in the complaints that the complainant is a payee or holder in due course of the cheques, as mentioned u/s 7 or 9 of the Negotiable Instruments Act same has not mentioned, and therefore, the petitioners-accused are required to be discharged. He has also placed reliance on the decision of this Court reported in 1995 Cri.L.R. (Guj.) 223, and Unreported Judgement in Cri.Rev.Appln.No.4691/96 dtd.15.4.97. Relying upon the same, he has argued that in both the cases court has taken the same view, and therefore, the petitioners-accused are required to be discharged only on that ground.

6. Learned counsel for the respondent No.2 has mainly argued that for such question court should not be decided at this stage. He has further argued that Manager is a right and authority to file the complaint on behalf of the firm. But facts remains that there is nothing on record to show that complainant has got power or authority to file the complaint. I have read the complaint. It is complete silent about the payee or holder in due course of the cheques. There is no mention in the complaint that the complainant is payee or holder in due course of the cheques as mentioned in Secs.7 or 9 of the Act.

7. In view of the aforesaid discussion, learned Jt. Judicial Magistrate First Class, Pardi had committed error in taking the cognizance on a complaints filed by a person who was not payee or holder in due course and the person who has no authority to file the said complaints and when complaint is silent about it that the complainant is not the payee or holder in due course.

8. In view taken by this court in case of Dipendra G. Choksi & Anr. Vs. Kailashchandra C.Dhoot & Anr. reported in 1995 Cr.L.R. (Guj.) Page 223, wherein court has held that,

"Negotiable Instruments Act, 1881- Secs.7, 9, 138, 142 - Dishonoured Cheque - Court will take cognizance if there is a complaint in writing - It must be filed by the payee or holder in due course of the cheque - The requirements mentioned in section 7 or 9 are to be stated in the complaint - Sec. 142 Clause (a) lays down the mandatory requirement."

There is nothing to show that complainant is a payee or a holder in due course, the Court could not have taken cognizance. Even the complainant has not produced any authority or power to file a complaint in the court below or not specified to this court that he is holder in due course of the cheque. Hence, in absence of above positive averment in the complaints the Court ought not to have taken cognizance of the offence, and therefore, the process issued against the present petitioners requires to be quashed on this limited ground only. I do not find any substance in the argument advanced by the learned counsel for the respondents, and more particularly reliance which has been put forward by learned counsel for the respondents upon a judgment reported in 1997 (2) Crimes Page 115 Madras High Court, because the above judgment is on different point,

wherein, the only question that was before the High Court of Madras, whether Manager of a partnership firm could file a complaint in absence of power of attorney or any authorisation. But it has been clearly established from para 5 of the above judgment that the person who has filed a complaint was the Manager of the company and the company though it is a legal entity, does not have soul, mind, body and limbs to walk to the court for preference of a complaint, and more particularly complainant has filed the documents alongwith the complaint and relying upon the same court has decided the matter. Wherein, in this case, no such materials have been produced by the complainant alongwith the complaints, and complainant is not a Company registered under the Companies Act, and therefore, complainant has not get any benefit under the Explanation (a) to Sec.141 of the Negotiable Instruments Act. Hence, I accept the submission made by learned Counsel for the petitioners that complaints are not in order and not in conformity with the provisions of the Act. Hence, they cannot be sustained and are liable to be quashed.

9. In the result, these Criminal Revision Applications are allowed. The proceedings pending before the court below being Criminal Cases Nos.3285/96, 1118/97 and 2667/96 are hereby quashed and set aside. Rule is made absolute in these three Criminal Revision Applications.

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